

Office - Supreme Court, U. S.

FILED

JUL 9 1940

CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 223

SARA ADLER (NOW SARA COWLEY-BROWN),
Petitioner,

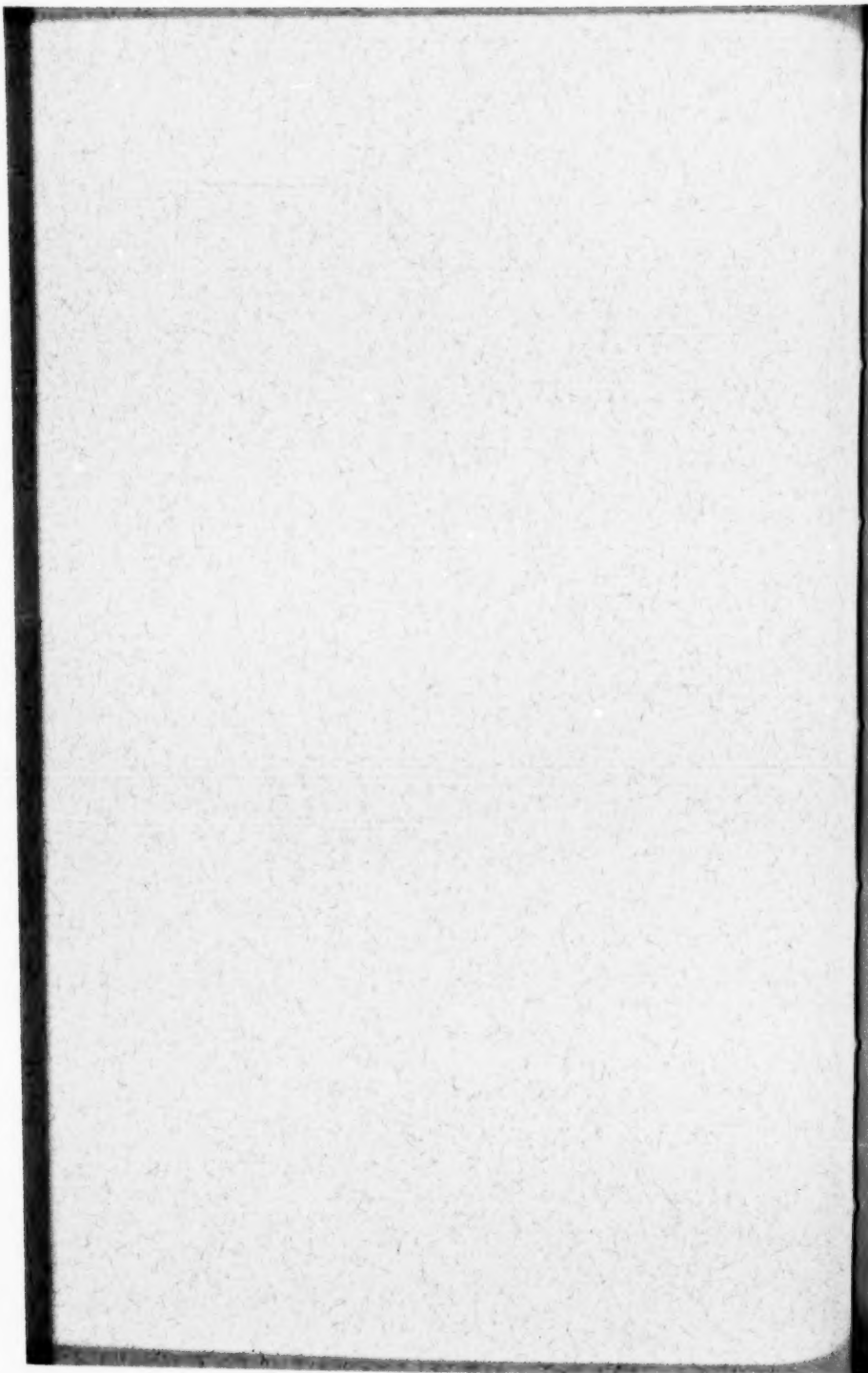
vs.

SIDNEY ADLER.

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF ILLINOIS
AND BRIEF IN SUPPORT THEREOF.

ODE L. RANKIN,
Counsel for Petitioner.

LEO O. McCABE,
HARRY ABRAHAMAS,
Of Counsel.



INDEX.

SUBJECT INDEX.

	Page
Petition for writ of certiorari.....	1
Summary statement of the matter involved.....	1
Jurisdiction.....	4
Questions presented.....	11
Reasons relied on for allowance of the writ.....	13
Brief in support of petition.....	16
Opinion below.....	16
Jurisdiction.....	16
Statement of the case.....	16
Specification of errors.....	20
Argument.....	21
I. The trust agreements and the decree ratifying them create a vested prop- erty interest in the real estate placed in trust and the rents and profits and issues thereof, which the decision of the court destroys.....	21
II. The obligation to pay alimony is not a debt but a duty of the husband to sup- port his wife. Where by consent of the parties the obligation is enlarged beyond the divorce statute to extend payments for the life of the wife and by its terms become a charge upon his estate, the decree rests upon contract and is not alimony subject to modifi- cation.....	27
III. The retrospective application of the 1933 statute made by the court ending the payments held to be alimony be- cause of the remarriage of Sara Adler operates to cut off her vested rights to such alimony, if such payments be alimony.....	33

Cases:

	Page
<i>Adams v. Storey</i> , 135 Ill. 448	31
<i>Bacon v. Texas</i> , 163 U. S. 297	10
<i>Barnes v. American Fertilizer</i> , 144 Va. 692	15, 30
<i>Blethen v. Blethen</i> , 117 Wash. 431	10, 14
<i>Brandon v. Brandon</i> , 1940 Tenn., 135 S. W. (2d) 929	28
<i>Commissioner of Int. Rev. v. Tuttle</i> , 6th Cir., 89 F. (2d) 112	15
<i>Dickey v. Dickey</i> , 154 Md. 675	15, 29, 30
<i>Fuller v. Fuller</i> , 49 R. I. 6	10, 14
<i>Furman v. Nichol</i> , 8 Wall. 44	10
<i>Goldman v. Goldman</i> , 282 N. Y. 296	15
<i>Goodsell v. Goodsell</i> , 82 App. Div. 65, 81 N. Y. S. 806	14
<i>Helvering v. Fitch</i> (1940 U. S. Supreme Ct.), 60 Sup. Ct. Rep. 427	32
<i>Helvering v. Fuller</i> (1940 U. S.), 60 Sup. Ct. Rep. 784	15, 31
<i>Helvering v. Leonard</i> (1940 U. S.), 60 Sup. Ct. Rep. 780	32
<i>Herrick v. Herrick</i> , 319 Ill. 146	28, 31
<i>Indiana ex rel. Anderson v. Brand</i> , 303 U. S. 95	10
<i>Kansas City Southern Ry. v. Albers Comm. Co.</i> , 233 U. S. 573	11
<i>Krauss v. Krauss</i> , 127 App. Div. 740, 111 N. Y. S. 788	10, 14
<i>Lennahan v. O'Keefe</i> , 107 Ill. 626	28
<i>Livingston v. Livingston</i> , 173 N. Y. 377	10, 14
<i>Louisville Gas Co. v. Citizen Gas Co.</i> , 115 U. S. 683	10
<i>Mobile & Ohio Ry. v. Tenn.</i> , 153 U. S. 486	10
<i>Moore v. Crutchfield</i> , 136 Va. 20	15, 29, 32
<i>Murdock v. Memphis</i> , 20 Wall. 590	8, 10
<i>North v. North</i> , 339 Mo. 1226	14, 29
<i>Northern Pac. Ry. Co. v. N. Dak.</i> , 236 U. S. 585	11
<i>Pryor v. Pryor</i> , 88 Ark. 302	15
<i>Renick v. Renick</i> , 247 Ky. 628	15, 32
<i>Rogers v. Hennepin</i> , 240 U. S. 184	10
<i>Schnitzer v. Buerger</i> , 237 App. Div. 632, 262 N. Y. S. 385	15
<i>Scott v. Jones</i> , 4 Wall 420	10

	Page
<i>Sistare v. Sistare</i> , 218 U. S. 1	10, 14
<i>Smith v. Smith</i> , 334 Ill. 370	28
<i>Spear v. Spear</i> , 158 Md. 672	15, 29
<i>Stillman v. Stillman</i> , 99 Ill. 196	28, 36
<i>Storey v. Storey</i> , 125 Ill. 608	31
<i>Stoutenburg v. Stoutenburg</i> , 285 Mich. 505	15, 32
<i>Walker v. Walker</i> , 155 N. Y. 77	14
<i>Wilmington & Weldon Ry. Co. v. Ashbrook</i> , 146 U. S. 279	10

Statutes:

Ill. Rev. Stat. of 1921, Ch. 40, Sec. 18 (Ill. Rev. Stat. Hurd, 1921, Ch. 40, Sec. 19)	4, 9, 33
Ill. Rev. Stat. 1940, Ch. 40, Sec. 18, as amended in 1933 (Ill. Rev. Stat., 1939, Ch. 40, Sec. 19)	9
Judicial Code, Section 237 (b), Ch. 229, 43 Stat. 937, 28 U. S. C. A., Sec. 344 (b)	4, 16

Text:

Bishop, Marriage and Divorce (6th Ed.)	28
--	----



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 223

SARA ADLER (NOW SARA COWLEY-BROWN),
Petitioner,

vs.

SIDNEY ADLER.

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF ILLINOIS
AND BRIEF IN SUPPORT THEREOF.**

Petition.

Petitioner, Sara Adler (now Sara Cowley-Brown), a resident of the City of Chicago, Cook County, Illinois, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Illinois entered in the above cause on February 21, 1940 (R. 222-234) and rehearing denied April 10, 1940 (R. 279).

Summary Statement of the Matter Involved.

The decision of the Supreme Court of Illinois sought to be here reviewed affirms an order (Abs. 216-217) of the Circuit Court of Cook County, Illinois entered on May 8, 1939

in a divorce proceeding upon the petition (Abs. 8-39) of Sidney Adler by which the court modified the terms of a consent decree entered on December 2, 1922 (Abs. 5-8) with respect to payments provided therein to be made to Sara Adler.

The divorce proceeding was instituted by Sidney Adler against his wife Sara Adler and the divorce was decreed to him upon the ground of desertion (Abs. 5). A supplemental decree settled the matter of their marital and property rights (Abs. 5-8).

The payments provided for were provided for in trust agreements (Abs. 12-17, 56-62; 17-24, 24-35) which were ratified by the decree, and were to be made by trustees, to whom property was conveyed to manage; those payments were claimed by Sidney Adler in his petition to be "alimony" payments.

The petition for modification was made on two grounds: *First*: That an amendment to the divorce statute of Illinois in force July 13, 1933 which provided that "a party shall not be entitled to alimony and maintenance after remarriage" is self executing and that Sara Adler who remarried in 1924 was not entitled to alimony thereafter (Abs. 9-10). *Second*: That because of changed circumstances of the parties the payments provided in the consent decree should be reduced (Abs. 10-11).

Sara Adler claims the payments are due under a property settlement creating a life estate for her life by an irrevocable trust is a property right, not alimony, and not subject to reduction or modification and that the contracts and decree say remarriage shall not affect her rights (Abs. 40-42; 49-51) and that any modification of the decree will violate her constitutional rights under paragraph one of Section 10 of Article I and the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States (Abs. 42-43).

The petition of Sidney Adler was referred to the Master in Chancery who found the decree of November 20, 1922, to be a provision for alimony (Abs. 73) though the *petition of Sidney Adler* for modification called it a provision *in lieu of alimony* (Abs. 11) and found that the amended provision of the divorce act in 1933, Section 18, providing for the abolition of alimony on remarriage applied to all decrees, whether rendered before or after the amendment (Abs. 74-75) and found a change in financial condition (Abs. 75). He recommended the abrogation of the \$4,600.00 yearly payments, the total amount affected by the decree of 1922, on the ground of the amendment of the Statute, the remarriage, and a change in financial condition.

On May 8, 1939, the court approved the **Master's report** and entered a decree discharging Sidney Adler from the obligation of paying Sara Adler alimony of \$4,600.00 provided in the supplemental trust agreement of December 2, 1922, effective from the date of the petition, May 22, 1936 (Abs. 216). The court also decreed that the trustees under the trust agreement and conveyances shall pay the income from the supplemental trust back to Sidney Adler instead of to Sara Adler, as provided in the contract, the trust, and in the decree (Abs. 217), that is, the amount above the \$5,400.00 yearly (\$1,350.00 quarterly), which was provided in the first trust in 1920.

The Supreme Court of Illinois on appeal held that the property settlement and trust arrangement and provisions thereof, having been incorporated in the decree, became merged therein and were thereby transformed into alimony provisions (R. 230, 232) and that the act of 1933, which provides that remarriage deprives the divorced wife of right to further alimony, operated to cut off the rights of Sara Adler under the contracts and decree; and that the trustee arrangement, having thus taken the form of alimony payments, to be made by the trustees, the provisions of the

decree as to such payments was subject to change under the statute of the State which authorized the modification of alimony allowances as the fortunes of the parties may from time to time change (R. 231-232).

The opinion was filed in said cause in the Supreme Court of Illinois on February 21, 1940 (R. 221-232). A petition for rehearing was filed (R. 235) in said court which was denied on April 10, 1940 (R. 279).

It is contended that the decision of the trial court and the Supreme Court of Illinois has violated and voided the obligations of the contracts between the parties and thereby destroyed the vested rights of Sara Adler in the trust property and the income thereof and has taken her property without due process of law.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925, Chap. 229, 43 Stat. 937, 28 U. S. C. A. Sec. 344 (b).

The grounds upon which the petitioner seeks to invoke the jurisdiction of this Court is that Art. I, Section 10 of the Federal Constitution prohibiting the impairment of the obligation of contract and the due process clause of Section 1 of the 14th Amendment to the Federal Constitution were violated by the decision of the Supreme Court of the State of Illinois in this case. These constitutional questions were raised in the pleading of the petitioner herein in answer to the petition of the respondent who was seeking a modification of the divorce decree entered in 1922. In paragraph 5 of the answer (Abs. 42-43) it is alleged that Section 18 of Chapter 40 of Illinois Revised Statutes, as amended July 13, 1933, in so far as that amendment is applied to this decree "deprives respondent of her prop-

erty without due process of law, impairs obligations of contracts and contravenes and violates the first paragraph of Section 10 of Article I and the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States of America and is unconstitutional and void and further contravenes and violates Section 2 of Article II and Section 14 of Article II of the Constitution of the State of Illinois and is unconstitutional and void" (see also Par. 11 (Abs. 49-51) of the Answer).

The constitutional issue of destroying vested property rights is again raised in the amended answer in Par. 2 and 3 (Abs. 68) wherein it is alleged that the trust agreements and trust indenture conveyed to and vested in respondent "an irrevocable life estate that can not be taken from her or reduced or modified or any manner impaired without her consent and without consent of said trustees."

The constitutional issues were again raised in the objections to the Master's Report in Par. 4 (Abs. 205) and Pars. 26 to 30 (Abs. 211-212) on destroying vested property rights; and in Par. 7 (Abs. 206) and Par. 30 (Abs. 212-213) on impairing the obligations of contract and destroying vested rights by applying a subsequently enacted State statute retrospectively to a prior decree.

Objection was made to the Master's Report in Par. 26-30 (Abs. 211-212) on the ground that the supplemental trust indenture and supplemental trust agreement of December 1, 1922, vested an equitable and irrevocable life estate in the real estate thereby conveyed, and in not finding that said equitable life estate cannot be in any way modified, impaired, or divested.

Objection was made to the Master's Report in Par. 30 (Abs. 212-213) on the ground that "If the amendment enacted in 1933 to Section 18 of Chapter 40 of the Divorce Act, providing that a party shall not be entitled to alimony and

maintenance after remarriage, were construed to be applicable to decrees entered and remarriages contracted prior to the date of its enactment, said statute as amended would be unconstitutional and in violation of the first paragraph of Section 10 of Article I, and the 5th Amendment and the 14th Amendment of the Constitution of the United States and in violation of Sections 2 and 14 of Article II of the Constitution of the State of Illinois."

The Master reported among other things as follows:

"In the year 1933, the Legislature of this state amended Section 18, Chapter 40 of the Divorce Act by providing, among other things as follows: 'And provided further that a party shall not be entitled to alimony and maintenance after remarriage.' This amendment became effective in July, 1933, and has not since been repealed and is still in force. The respondent, Sara Adler, remarried in the year 1924 * * * The language of the statute as amended is very definite and makes no exception, and in the opinion of the Master the situation of the parties involved in this proceeding comes clearly within the language of the amendment."

The objections to the Master's Report stood as exceptions (Abs. 215). The judge overruled said exceptions (Abs. 216) and decreed that the trustees under the supplemental trust and agreement of December 1, 1922, pay the \$4,600.00 annually to the husband instead of the wife as provided in the contract, trust, and the decree (Abs. 216-217). An appeal was taken (Abs. 217) directly to the Supreme Court, a constitutional question being involved.

The Supreme Court in this case said:

"The appeal has been brought direct to this court because the validity of the act of 1933 amending Section 18 of the Divorce Act is questioned. Laws of 1933, p. 490; Ill. Rev. Stat., 1939, Chap. 40, Par. 19" (R. 224).

The State Supreme Court ruled on the application of the legislative act of 1933 as applicable to a former decree as follows:

"The questioned provision of the amendment of Section 18 of the Divorce Act is the proviso that a party shall not be entitled to alimony and maintenance after remarriage. It is urged that if this clause is given effect, and respondent's right to alimony taken away by reason of her remarriage, it takes from her vested rights contrary to the constitutional guarantees" (R. 231).

"Her rights became fixed as to accrued payments, but as to all payments maturing in the future she had no vested right. The trial court did not undertake to give the statute a retroactive effect for the decree made the modification effective as of the date of the filing of the petition. The amendment of 1933 to Section 18 of the Divorce Act does not affect any vested rights of respondent" (R. 232).

The State Supreme Court ruled on the question of vested rights as follows:

"The question presented is whether the provision in the supplemental instruments of December 1, 1922, and the decree of December 2nd for the quarterly payment of \$1150.00, was an allowance of alimony and subject to modification under Section 18 of the Divorce Act, or was it a final settlement in gross, of all the interest of the parties arising out of the marital relation, and therefore, beyond the power of the court to modify or change" (R. 224).

The Supreme Court of Illinois affirmed the decision destroying the contract and trust (R. 232).

In the petition for rehearing the question of vested property rights was again raised (R. 238-242) specifically (R. 240-241) as follows:

“Since, by uniform decisions of the courts of Illinois, the divorce court could not modify or abrogate or take away an award of a definite sum or of specific property or estate therein, that award in the case at bar was not contingent but vested, and being vested, it is not subject to divestiture or modification or impairment whether it arose out of and depended upon the trust indenture and agreement or arose out of and depended upon the decree of December 2, 1922. Any divestiture or impairment of that vested property interest is and must be a violation of Respondent’s constitutional rights, not only under the Constitution of the State of Illinois but also under the First Paragraph of Section 10 of Article I, and the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States as pleaded in Respondent’s answer.”

In a petition for rehearing the question of impairing the obligation of contract was raised (R. 250) as follows:

“The court erred in overruling respondent’s contention that the amendment of 1933, making the cancellation of alimony mandatory after remarriage could not be constitutionally made retroactive as against the preceding decree of December 2, 1922.”

The Supreme Court ruled against petitioner on all constitutional grounds and affirmed the trial court in toto (R. 233).

The Court Has Jurisdiction to Hear the Questions Involved.

This Court has jurisdiction because Federal questions of substance and importance were involved. The questions were decided wrongly by the Supreme Court of the State of Illinois and the Federal questions were vital and necessary to the decision.

Murdock v. Memphis, 1874, 20 Wall. (87 U. S.) 590.

The Supreme Court of Illinois erred in that the decision of the court destroyed a contract and a trust conveyance; by declaring them merged into a decree of alimony; by applying Section 18 of the Statute of Illinois; by permitting a modification of alimony, thereby destroying the petitioner's property rights without due process of law under Section 1 of the 14th Amendment of the United States Constitution.

Also the Supreme Court of Illinois erred by applying an amendment of 1933 to Section 18 retroactively to the contracts, conveyances and decree of 1922, thereby not only destroying vested rights without due process, but also impairing the obligation of contract under Article I, Section 10 of the Federal Constitution.

Section 18, Chapter 40 of the Illinois Statutes (Ill. Rev. Stat., Hurd, 1921, Chap. 40, Sec. 19) in existence at the time of the decree, contracts, and conveyances in question reads as follows:

“Alimony—* * * When a divorce shall be decreed the court may make such order touching the alimony and maintenance of the wife, * * * as, from the circumstances of the parties and the nature of the case, shall be fit, reasonable and just; * * * And the court may, on application, from time to time, make such alteration in the allowance of alimony and maintenance, * * * as shall appear reasonable and proper.

Section 18, Chap. 40, of the Illinois Statutes (Ill. Rev. Stat., 1940, Chap. 40, Sec. 19) as amended in 1933, reads as follows:

“Alimony—* * * When a divorce shall be decreed the court may make such order touching the alimony and maintenance of the wife * * * as from the circumstances of the parties and the nature of the case, shall be fit, reasonable and just; * * * *provided further that a party shall not be entitled to alimony*

and maintenance after remarriage. And the court may, on application, from time to time, make such alterations in the allowance of alimony and maintenance * * * as shall appear reasonable and proper."

The Statute was applied retroactively.

Fuller v. Fuller, 49 R. I. 6, 139 Atl. 662;

Livingston v. Livingston, 173 N. Y. 377, 66 N. E. 123;

Sistare v. Sistare, 218 U. S. 1.

Krauss v. Krauss, 127 App. Div. 740, 111 N. Y. Supp. 788;

Blethen v. Blethen, 117 Wash. 431, 32 Pac. (2) 534.

The non-Federal questions in the case are not of such controlling influence on the whole case that they are alone sufficient to support the judgment.

Indiana ex rel. Anderson v. Brand, 303 U. S. 95;

Rogers v. Hennepin, 240 U. S. 184;

Bacon v. Texas, 163 U. S. 297;

Mobile & Ohio Ry. v. Tennessee, 153 U. S. 486;

Wilmington & Weldon Railway Co. v. Ashbrook, 146 U. S. 279;

Murdock v. Memphis, 20 Wall. 590 (87 U. S.).

The court erred and destroyed vested property rights in applying Section 18 of said Statute to the contract and conveyances herein, regardless of when its provisions were enacted.

Scott v. Jones (1846), 4 Wall. 420, 427 ("It is said that the act upon its face does not purport to be repugnant to the Constitution or laws of the United States. If this be admitted, it by no means follows that the act is constitutional. Whether constitutional or not must be determined by the effect of the act.").

Furman v. Nichol, 1869, 8 Wall. 44.

Louisville Gas Co. v. Citizens' Gas Co., 115 U. S. 683, 697 ("Whether an alleged contract arises from State legisla-

tion, or by agreement with the agents of a State, by its authority, or by stipulations between individuals exclusively, we are obliged upon our own judgment and independently of the adjudication of the State court, to decide whether there exists a contract within the protection of the Constitution of the United States.”)

Kansas City Southern Railway v. Albers Commission Co., 223 U. S. 573, 593.

Northern Pacific Ry. Co. v. North Dakota, 1915, 236 U. S. 585, 593. (The court will review the finding of facts where a conclusion of law as to a Federal right and finding of fact are so intermingled as to make it necessary, in order to pass upon the Federal question, to analyze the facts.

Questions Presented.

The questions presented are :

Where in a decretal provision for alimony payments for the life of the divorced wife it is provided by contract ratified in a consent decree that remarriage of the divorced wife shall not affect her right to such payments, does a modification by total reduction of such payments, over her objection, under a statute, in force at the time of the decree, permitting reduction under changed conditions of the parties, deprive her of a vested right in violation of her constitutional rights under Section 1 of the 14th Amendment to the Federal Constitution.

Where by consent alimony payments allowed in a decree are an enlargement upon the obligation of the husband to support, *i. e.*, payments for the life of the wife and regardless of her remarriage, may such payments be modified at the instance of the divorced husband and over the objections of the divorced wife, because of changed financial conditions of the divorced husband under a statute in force

at the time of the decree allowing reductions of alimony because of changed conditions of the parties without depriving the divorced wife of property without due process of law.

Can a consent of alimony decree which provides payments for life of the divorced wife and regardless of her remarriage be modified to her detriment without her consent upon petition of the divorced husband alleging as a ground his adverse financial conditions under a statute allowing modification of *alimony decrees* upon change in the financial circumstances of the parties without depriving the divorced wife of property without due process of law.

Does a consent decree confirming a property settlement in a divorce proceeding awarding the divorced wife certain payments for her life and regardless of her remarriage to be received by her "as and for her permanent alimony and as a complete and final settlement of all her rights of dower, alimony, property, and other rights and claims" against her divorced husband, create such a vested right that it cannot be set aside under a subsequently enacted statute providing that a party shall not be entitled to alimony and maintenance after remarriage, without violating her constitutional rights in impairing the obligation of contract, and destroying vested rights.

Whether a consent decree in a divorce action can be modified on the ground of remarriage and changed financial condition under an existing State statute which provides for modification of alimony (future) on a showing of changed circumstances, as to payments to be made to the wife in accordance with a contract and trust indenture incorporated therein without depriving the wife of property without due process of law under Section 1 of the 14th Amendment to the Federal Constitution, where the decree approves and affirms the said contract and trust indenture, which pro-

vides for payments to the wife quarterly from the rents and profits of a trust conveyance for her natural life, even though, she may remarry which provisions could not be decreed except by consent, and where the decree further settles all of her rights of dower, alimony, and other rights and claims, and specifically says "no subsequent marriage of said Sara Adler shall affect this decree or any or all of the indentures or agreements in this decree referred to."

Where under a property settlement contract and a consent decree confirming it, a divorced wife is awarded alimony payments during her life and regardless of her remarriage and where such provision was lawful at the time of the entry of the consent decree, can such payments be abrogated under a subsequently enacted statute which provides that "a party shall not be entitled to alimony and maintenance after remarriage" without depriving the divorced wife of the benefit of her contract under Article 1, Section 10, of the Federal Constitution, and without destroying her property rights as protected by Section 1 of the 14th Amendment of the Federal Constitution.

Can the State court destroy, not just the personal obligation of a decree in a divorce proceeding, but also a contract and trust settlement which were declared valid by the court itself, by saying it is merged in the decree as alimony although it was a full and final settlement of alimony, dower and all property rights according to both the wording of the contract and the trust, and also the decree itself.

Reasons Relied On for Allowance of the Writ.

The decision of the State Supreme Court in applying a State statute passed in 1933 to a decree rendered in 1922 but at the same time denying it is retroactively applied in violation of a vested right because it affected only payments from the date of the petition to modify that decree filed in

1936, raises an important question of Federal law which has been, either directly or in substance, decided in the State courts of last resort contrary to the decision of the State court herein, but has not been directly passed on by this Court, and insofar as it has been touched upon, the decisions are to the contrary. It should be heard because the statute was passed subsequent to the contract and the decree; the statute was wrongly and retroactively applied; and the statute was given substantial weight in the decision in the cause.

Blethen v. Blethen, 117 Wash. 431, 32 Pac. (2) 543;
Livingston v. Livingston, 173 N. Y. 377, 66 N. E. 123;
Krauss v. Krauss, 127 App. Div. 740, 111 N. Y. Supp. 788;
Fuller v. Fuller, 49 R. I. 6, 139 Atl. 662;
Walker v. Walker, 155 N. Y. 77, 49 N. E. 663;
Goodsell v. Goodsell, 82 App. Div. 65, 81 N. Y. S. 806;
Sistare v. Sistare, 218 U. S. 1.

The decision in this case, contrary to decisions in the court of last resort in several States, destroys, not just the personal obligation of the decree, but also destroys a trust settlement and contract declared to be valid by the court itself by the simple process of calling the contract and trust, alimony, and by declaring the contract merged in the decree, thereby raising an important question of Federal law frequently before the State courts but not heretofore before this Court, and therefore without the guiding influence of a Federal decision in protecting rights guaranteed in the 14th Amendment and by Section 10, Article I of the Federal Constitution; and a denial of this writ will add increased force to the taking of such rights.

North v. North, 1936, 339 Mo. 1226, 100 S. W. (2) 582,
 109 A. L. R. 1061;

Dickey v. Dickey, 1928, 154 Md. 675, 151 Atl. 387, 58 A. L. R. 634;
Spear v. Spear, 1930, 158 Md. 672, 149 Atl. 468;
Barnes v. American Fertilizer Co., 1935, 144 Va. 692, 130 S. E. 902;
Moore v. Crutchfield, 1923, 136 Va. 20, 116 S. E. 482;
Renick v. Renick, 1933, 247 Ky. 628, 57 S. W. (2d) 663;
Stoutenburg v. Stoutenburg, 285 Mich. 505, 281 N. W. 305;
Schnitzer v. Buerger, 237 App. Div. 632, 262 N. Y. S. 385;
Pryor v. Pryor, 1908, 88 Ark. 302, 114 S. W. 700;
Goldman v. Goldman, 1940, 282 N. Y. 296, 26 N. E. (2d) 265;
Helvering v. Fuller, 1940, 60 Sup. Ct. 784;
Commissioner of Int. Rev. v. Tuttle, 1937, 6th Circuit 89 F. (2d) 112.

Conclusion.

It is therefore respectfully requested that this petition for a writ of certiorari be allowed and that the writ be granted to review the judgment of the Supreme Court of the State of Illinois.

ODE L. RANKIN,
Counsel for Petitioner,
 134 N. La Salle Street,
 Chicago, Illinois,
 Phone: Randolph 8786.

Of Counsel:

LEO O. McCABE,
 HARRY ABRAHAMS.